International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO-CLC *and* Mechanical Systems, Inc. and International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 111, affiliated with AFL-CIO

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Lodge No. 60 of Peoria and Central Illinois *and* Mechanical Systems, Inc. and International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 111, affiliated with AFL-CIO. Cases 33-CD-240 and 33-CD-241

February 1, 1982

DECISION AND DETERMINATION OF DISPUTE AND ORDER QUASHING NOTICE OF HEARING

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Mechanical Systems, Inc. (the Employer), alleging that International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO-CLC (the International Brotherhood), and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Lodge No. 60 of Peoria and Central Illinois (Lodge 60), had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees represented by Lodge 60 rather than to employees represented by International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 111, affiliated with AFL-CIO (Local 111).

Pursuant to notice, a hearing was held on March 19, 1981,[1] before Hearing Officer Ronald J. Symkowiak and on March 23, before Hearing Officer Stephen S. Shostrom. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, each party filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings made at the hearings by the Hearing Officers and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The Employer, a Delaware corporation with an office and place of business in Rockford, Illinois, is engaged in the construction of mechanical systems for various manufacturing establishments located inside and outside the State of Illinois. During the past year, the Employer has had a gross volume of business in excess of $500,000, and during the same period, has purchased and received goods valued in excess of $50,000 from points located directly outside the State of Illinois. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the International Brotherhood, Lodge 60, and Local 111 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

In May 1980, the Employer contracted with Blount Brothers, a construction management firm, to perform work at the John Deere Foundry located in Silvis, Illinois. The task was to improve the ventilation and air pollution control system of the foundry by modifying and expanding the facility's ventilation system. This ventilation system is basically comprised of hoods, ducts, and baghouses which are also known as dust collectors. The project involves four baghouses. Of the three existing baghouses, two were to be modified and updated, and the third was to be disconnected from the system. A fourth baghouse, known as a reverse air system baghouse because of its reverse air cleaning system, was to be errected.

The Employer schedules the performance of work pursuant to what it calls the "critical path method." Essentially this means that work needs to be performed and completed at each phase before the next phase can be initiated. On this project, the time sequence is extremely critical because certain work (e.g., replacing ducts) can only be performed when the foundry is shut down. The annual shutdown period begins the third week of July and ends the first week in August. During the 1980 shutdown, the Employer began work on the pro-

[1] All dates herein refer to 1981 unless otherwise specified.

ject which involved dismantling certain existing ducting and installing new ducting. This work was performed exclusively by employees represented by Local 111 pursuant to the terms of an agreement (called the National Maintenance Agreement) entered into in April 1980 between the Employer and the International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO (the International Association). The work was successfully completed within the allotted time period.

Sometime after the summer shutdown work was completed, Dick Johns, executive secretary of the Building Trades Council, requested that the Employer hold a conference with all the local craft unions. The first meeting was held at the Employer's offices in Silvis, Illinois, in October 1980. The craft unions present were the Iron Workers (Local 111), the Boilermakers (Lodge 60), the Millwrights, the Sheet Metal Workers, the Plumbers, and the Electricians. In response to the question of whether an assignment had been made, the Employer's general manager, Stephen J. Teeple, informed the representatives that Local 111 represented employees had performed all the shutdown work and that he saw no reason why they could not continue and finish. Teeple also informed the group that the work was being performed pursuant to the National Maintenance Agreement. At the end of this meeting, and at two subsequent meetings held in January, Gerald Goodwin, president of Lodge 60, made a plea for assignment of part of the work on the new baghouse and ductwork to the Boilermakers. During one of the subsequent meetings, Goodwin delivered to representatives of the Employer and Local 111 what appeared to be an agreement between the Iron Workers and the Boilermakers. Goodwin suggested that the work be divided consistent with this agreement. At each of the January meetings, Leroy Russell, business agent for Local 111, claimed all the work for the Iron Workers.

Thereafter, through efforts of Lodge 60, both the International Brotherhood and the International Association became involved in an effort to resolve this local jurisdictional dispute. Although there appeared to be a tentative agreement that the Employer would comply with any compromise reached between Local 111 and Lodge 60 through their respective Internationals, the Employer by telegram dated February 11 informed all parties that the work was assigned exclusively to Local 111. That same day, Robert Cunningham, the representative for the International Brotherhood who had been assigned to resolve the instant dispute, telephoned Teeple about a site change for the next scheduled meeting (the first involving International representatives). In the conversation, Teeple informed Cunningham that an assignment had already been made to Local 111. After a brief heated discussion wherein Cunningham complained that the assignment made all his efforts to reach an agreement an exercise in futility, Cunningham, according to Teeple, concluded by stating, "I will have to do what I will have to do" and that he "supposed all the other crafts will do the same." Cunningham testified that he told Teeple, "I guess I will just have to do what I will have to do and suppose all the other crafts will do the same, that they will be filing jurisdictional disputes, the Electricians, the Millwrights, and whatever." Later that evening, Goodwin called Teeple at home to discuss the assignment, stating that he believed Lodge 60 would be assigned the work pursuant to the "agreement." However, Teeple reiterated that he preferred having to deal with only one craft, and, in this case, it would be ironworkers. Goodwin ended the conversation by stating, "I've got to do what I've got to do, because that is my work and I'm going to get it."

The following morning, February 12, Teeple received a telephone call from Norm Gittleson, job foreman, informing Teeple that there was a picket line outside the main entrance of the project. There were between 10 to 15 Lodge 60 pickets carrying signs reading:

INFORMATIONAL
Mechanical Systems Unfair
Baghouse Assignment

One of the pickets was Goodwin. The pickets remained at the entrance most of that day. The following day, approximately the same number of pickets were at the entrance carrying signs reading:

ALL WE WANT IS OUR WORK

However, the pickets left near mid-day and have not since reappeared. It was later determined that Goodwin removed the pickets after receiving instructions from International Brotherhood Representative Joseph C. Meredith to do so. On February 12, the Employer filed charges alleging that the International Brotherhood and Lodge 60 had each violated Section 8(b)(4)(D) of the Act by the actions taken to secure work for Lodge 60.

B. *The Work in Dispute*

The work in dispute involves a portion of the construction of a nonpressurized reverse air baghouse by the Employer at the John Deere Foundry in Silvis, Illinois. The Employer has subcontracted certain work involving cranes and the installation

of electrical systems and these tasks are not in dispute here.

C. *The Contentions of the Parties*

The Employer contends that both the International Brotherhood and Lodge 60 violated Section 8(b)(4)(D) of the Act through oral threats by their representatives and by engaging in unlawful picketing at the John Deere Foundry jobsite. The Employer argues that there is no agreed-upon method of settling the dispute. On the merits of the dispute, the Employer contends that the disputed work should be awarded to employees represented by Local 111 because these employees have the requisite skills, and because such an award will result in greater efficiency and economy, and will comport with the Employer's preference and practice and with its collective-bargaining agreements with the International Association and Local 111.

Local 111 contends that Lodge 60, through oral threats and subsequent picketing, has violated Section 8(b)(4)(D). It takes no position regarding the International Brotherhood. It argues that there is no agreed-upon method for resolving the dispute. Regarding the merits of the dispute, it contends that the disputed work should be awarded to it because employees represented by it have the requisite skills to perform the work required, the Employer prefers working ironworkers exclusively, there exists collective-bargaining agreements between the Employer and both the International Association and Local 111 covering the disputed work, and considerations of efficiency and economy favor an award to it.

Lodge 60 does not dispute that there is reasonable cause to believe that it has engaged in conduct violative of Section 8(b)(4)(D) of the Act, but it does not admit to having violated the Act. It contends, however, that there is no reasonable cause to believe that the International Brotherhood has violated the statute and that the notice to the International Brotherhood should be quashed. Regarding the dispute, it contends that there exists an International agreement to which both it and Local 111 are bound and that an assignment should be made consistent with the agreement. On the merits of the dispute, it contends that the historical distribution of this kind of work and existing International agreements favor an assignment of the disputed work to it. Further, it contends that industry and area practice plus the skills of its members favor such an assignment.

D. *Applicability of the Statute*

Before the Board may proceed with the determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that (1) Section 8(b)(4)(D) of the Act has been violated, and (2) there is no agreed-upon method binding on all parties for the voluntary adjustment of the dispute. All parties agree, and we find, that there is no such agreed-upon method[2] although Lodge 60 relies heavily on an agreement between the Unions, which is described below, and contends that the Board should make an award in accord with that agreement.

With regard to the reasonable cause issue, the record establishes that on February 11 Goodwin informed Teeple that he intended to get the disputed work for Lodge 60 and on the following 2 days Lodge 60 members participated in picketing to secure that work. In these circumstances, we find that there is reasonable cause to believe that Lodge 60 has violated Section 8(b)(4)(D) of the Act.

With respect to the International Brotherhood, the only evidence presented at the hearing concerning a possible violation of Section 8(b)(4)(D) is the testimony of Teeple and Cunningham regarding their telephone conversation on February 11. Cunningham did not deny telling Teeple that he would do what he had to do in an attempt to get the assigned work. However, Cunningham further stated that he coupled this statement with a reference to the filing of a jurisdictional dispute. Furthermore, the evidence establishes that the International Brotherhood neither participated in nor sanctioned the picketing. In fact, the pickets were subsequently removed based on direct orders from Joseph C. Meredith, assistant director of the Construction Division of the International Brotherhood. In these circumstances, we find that, without more, Cunningham's statement, as testified to by Teeple, is ambiguous and, standing alone, is insufficient to establish a violation of Section 8(b)(4)(D).[3] Therefore, we find that there is insufficient evidence to conclude there exists reasonable cause to believe that the International Brotherhood engaged in any conduct violative of Section 8(b)(4)(D). Accordingly, the notice of hearing issued against the International Brotherhood in this proceeding will be quashed.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to various factors.[4]

[2] We also find that the evidence in the record is insufficient to warrant the conclusion that all parties reached an actual agreement governing the assignment of the disputed work.

[3] Cf. *United Mine Workers of America, Local Union 1368 (Bethlehem Mines Corporation)*, 227 NLRB 819, 820-821 (1977).

[4] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[5] The following factors are relevant in making the determination of the dispute before us:

1. Collective-bargaining agreements and certifications

There are no certifications of the Board awarding jurisdiction of the work in dispute to employees represented by either of the Unions involved in the present proceeding. However, the Employer is a party to collective-bargaining agreements with the International Association and with Local 111. The Employer has been a party to the National Maintenance Agreement since April 1980 and a party to the Local 111 agreement since December 11, 1980. There is no issue that the disputed work is covered by these agreements. At no relevant time has the Employer been a party to a collective-bargaining agreement with either the International Brotherhood or Lodge 60. Thus, this factor favors an award to the employees represented by Local 111.

2. International agreements

Lodge 60 submitted a "letter of understanding," dated February 8, 1972, to which the International Brotherhood and the International Association are parties, and argues that the work in dispute should be assigned in accord with that agreement.[6] This letter of understanding was the result of a jurisdictional dispute involving the erection of a nonpressurized baghouse at a Valley Consolidated Industries jobsite in 1972. Although the record contains evidence that this letter of understanding has been used to resolve jurisdictional disputes in the industry, it is not binding on the parties, but has been used as a tool to attempt to settle disputes between the parties. While Lodge 60 asserts here that the work should be assigned in conformity with the agreement, Lodge 60 is presently engaged in the erection of several baghouses in the area[7] and the division of work set out in the letter has not been followed on those projects. In any event, the Employer is not a party to this understanding and therefore cannot be bound. Thus, we find that this letter of understanding does not constitute a material factor in the resolution of the instant jurisdictional dispute, and we do not rely on it in making our determination as to which group of employees should be awarded the work.

3. Industry practice

Lodge 60 submitted documentary evidence it received from sister locals indicating that the 1972 letter of understanding had been used throughout the industry to resolve jurisdictional disputes. However, as noted above, Lodge 60 is not maintaining any consistent practice of dividing work on baghouses with employees represented by other craft unions and, in certain instances, has awarded itself all work on baghouses. Furthermore, the testimony of Teeple establishes that, while the Employer has little experience in the construction of baghouses, his previous employer, Great Lakes Crane, Inc., used ironworkers exclusively when performing baghouse work. We find that there is insufficient evidence to establish an industry practice with respect to the division of work on baghouses, and, accordingly, this factor favors neither group of employees.[8]

4. Skills

The record reveals that there are no unusual or highly specialized skills required for the erection of the baghouse or to perform other disputed work. The bulk of the work involves the assembly of components which are fabricated elsewhere and transported to the project. Employees represented by Local 111, while lacking experience in the construction of baghouses, receive substantial training through its apprentice program. Additionally, certain of the work has already been performed by employees represented by Local 111 to the satisfaction of the Employer. Employees represented by Lodge 60, on the other hand, are experienced in the construction of baghouses and are, in fact, presently constructing five in the area. As conceded by the parties, employees in either craft can, if called upon, completely erect a baghouse. Therefore, this factor does not favor an assignment to one group of employees as opposed to the other.

5. Efficiency and economy

The Employer contends that factors of efficiency and economy favored its assignment to Local 111 represented employees. First, the use of one craft would allow it to shift employees readily from one task to another, an extremely important considera-

[5] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

[6] The 1972 letter of understanding divides the construction or erection of nonpressurized baghouses between three crafts: Boilermakers, Ironworkers, and Millwrights. The Boilermakers in this proceeding is claiming only that work assigned to it under the letter of understanding.

[7] One baghouse is being constructed in Oglesby, Illinois, while four others are being constructed at the Rock Island Arsenal in Rock Island, Illinois.

[8] In light of this finding, we make no ruling on the Employer's and Local 111's contention that Lodge 60's evidence on this factor is in any event hearsay.

tion because the "critical path method" requires this flexibility. Second, assigning the work to one craft eliminates potential layoffs when what would normally be considered other craft work is completed. Third, sustaining its assignment would avoid changing the supervisory structure by eliminating the need to hire additional foremen to handle the other crafts. Finally, Local 111 represented employees are also already familiar with the site from their prior work on it. We find that efficiency and economy favor the Employer's assignment of the disputed work to employees represented by Local 111.

6. The Employer's past practice and preference

There is evidence establishing that the Employer has had extensive experience working with ironworkers and that on other projects throughout the country it has entered into local agreements in conjunction with the National Maintenance Agreement. Here, consistent with its practice, it signed an agreement with Local 111 after employee-members had performed work for the Employer during the 1980 summer shutdown of the John Deere Foundry. The Employer asserts that work performed by Local 111 represented employees during that period was performed in a timely and competent manner; and it continues to be satisfied with work performed by these employees. We therefore find that these factors favor an award of the work in dispute to employees represented by Local 111.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors, we conclude that the employees represented by Local 111 are entitled to perform the work in dispute. In reaching this conclusion, we have relied on the collective-bargaining agreements between the Employer and Local 111 and its International, factors of efficiency and economy, and the Employer's past practice and preference. In making this determination, we are awarding the work in dispute to the employees of the Employer who are represented by Local 111, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Mechanical Systems, Inc., who are represented by International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 111, affiliated with AFL-CIO, are entitled to perform work for Mechanical Systems, Inc., at the John Deere Foundry in Silvis, Illinois, involving a portion of the construction of a nonpressurized reverse air baghouse.

2. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers AFL-CIO, Lodge No. 60 of Peoria and Central Illinois, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Mechanical Systems, Inc., to assign the work in dispute to its members.

3. Within 10 days from the date of this Decision and Determination of Dispute, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Lodge No. 60 Peoria and Central Illinois, shall notify the Regional Director for Region 33, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the work in dispute in a manner inconsistent with the above determination.

ORDER

It is hereby ordered that the notice of hearing issued in Case 33-CD-240 against the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO-CLC, be, and it hereby is, quashed.